

Internal Revenue Service

**memorandum**

TL-N-5971-98

date: February 1, 2000

to: Internal Revenue Service, Examination Division  
Southern California District, San Diego  
attn: Bob Laughlin, Team Coordinator

from: Alice M. Harbutte, Special Trial Attorney  
Western Region, Denver, Colorado

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subject:

Statute Extensions, Forms 872  
U.S. Consolidated Returns: [REDACTED] and [REDACTED]  
Withholding Tax Returns: [REDACTED] and [REDACTED]

This memorandum is in response to your request that our office review the statute extensions, Forms 872, that have been secured from [REDACTED] with respect to three separate U.S. Consolidated Return of Income, Form 1120, for the years [REDACTED], [REDACTED] and [REDACTED]. You have also requested that we review the statute extensions for the Forms 1042, Withholding Tax Returns filed for [REDACTED], [REDACTED] and [REDACTED].

ISSUE

1. Whether the statute extensions, Forms 872, that were secured by the examination division for three separate U.S. Consolidated Return of Income, Form 1120, for the taxable years [REDACTED], [REDACTED] and [REDACTED] were properly executed by the taxpayer and constitute valid extensions.

2. Whether the statute extension, Form 872, that was secured by the examination division for the U.S. Withholding Tax Return, Form 1042, filed by [REDACTED] for the years [REDACTED], [REDACTED] and [REDACTED] were properly executed by the taxpayer and constitute valid extensions.

CONCLUSION

1. The Forms 872 extending the statute for the [REDACTED] and [REDACTED] U.S. Consolidated Returns are valid and should be countersigned by the Service. The Form 872 for the [REDACTED] U.S. Consolidated Return was not properly executed by the taxpayer and a new extension should be obtained.

2. The Forms 872 extending the statute for the [REDACTED] [REDACTED] and [REDACTED] U.S. Withholding Tax Returns, Forms 1042, are valid and should be countersigned by the Service.

#### FACTS

During the calendar year [REDACTED] and [REDACTED] a U.S. Consolidated Return of Income was filed by [REDACTED]. [REDACTED] was the common parent of this consolidated group. The [REDACTED] U.S. Consolidated Return listed [REDACTED] as one of the subsidiaries of [REDACTED].

On [REDACTED] [REDACTED] became the parent of [REDACTED]. [REDACTED]'s outstanding common stock was converted on a share for share basis into [REDACTED] common stock. In [REDACTED] a U.S. Consolidated Return of Income, Form 1120 was filed under the name of [REDACTED]. [REDACTED] was listed as a subsidiary in the schedule of affiliations submitted with this return. The most recent return secured by the examination division is the [REDACTED] U.S. Consolidated Return of Income, Form 1120, filed by [REDACTED]. In [REDACTED], [REDACTED] and [REDACTED] merged and formed [REDACTED], formerly known as [REDACTED]. On the [REDACTED] Consolidated Return [REDACTED] was shown as the common parent. [REDACTED] was listed as a subsidiary and holding company. [REDACTED] is listed as a subsidiary and public utility. [REDACTED] remains in existence as of this date.

In addition to the foregoing, you have stated that for the years [REDACTED], [REDACTED] and [REDACTED], U.S. Withholding Tax Returns, IRS Form 1042, have been filed by [REDACTED].

Statute extensions have been secured for the [REDACTED] U.S. Consolidated Returns, IRS Form 1120, and for the [REDACTED] Withholding Tax Returns, IRS Form 1042, for the years [REDACTED], [REDACTED] and [REDACTED]. You have asked this office to review the forms and determine if they are valid. Additional time remains on the statute so that new forms may be secured if needed.

Form 872: [REDACTED] and [REDACTED] U.S. Consolidated Return, Form 1120:

The statute extension for the [REDACTED] and [REDACTED] consolidated returns filed by [REDACTED] is on the same Form 872. The taxpayer at the top of this form is identified as [REDACTED]. This Form 872 was executed by [REDACTED], Director Tax Services, [REDACTED].

Form 872: [REDACTED] U.S. Consolidated Return, Form 1120:

The statute extension for the [REDACTED] consolidated return filed by [REDACTED] identifies the taxpayer as [REDACTED]. [REDACTED], Formerly Known as [REDACTED]. This

Form 872 was also executed by [REDACTED] Director Tax Services, [REDACTED].

Forms 872: [REDACTED] and [REDACTED] Withholding Tax Returns Forms 1042:

The statute extension for the [REDACTED], [REDACTED] and [REDACTED] U.S. Withholding Tax Returns, Forms 1042 filed by [REDACTED] each identify the taxpayer as [REDACTED]. These Forms 872 were all executed by [REDACTED] Director Tax Services, [REDACTED].

Your memorandum does not question the authority of [REDACTED] Director of Tax Service, to execute extensions on behalf of [REDACTED].

### DISCUSSION

The common parent of a consolidated group is the sole agent for each subsidiary in the group. Treas. Reg. @ 1.1502-77(a). Thus, generally, the common parent is the proper party to receive a statutory notice of deficiency, for all members in the group. Treas. Reg. @ 1.1502-77(a). Generally, the common parent for a particular consolidated return year remains the common parent agent for purposes of extending the period of limitations with respect to that year even though that corporation is no longer the common parent of that group when some action, such as executing an extension, needs to be taken for that year.

There are exceptions to this general rule. First, the general rule does not apply when the consolidated return group undergoes a reverse acquisition or downstream transfer following the consolidated tax year in question. This exception does not apply to this case.

Second, the general rule does not apply when the common parent is not in existence at the time of the issuance of the statutory notice or at the time the extension is obtained. [REDACTED] is still in existence and is a subsidiary of the consolidated group. A common parent is considered to have gone out of existence when it formally dissolves or merges under state law into another corporation.

In addition, Temp. Treas. Reg. § 1.1502-77T provides that the new common parent is an alternate agent for the former common parent of a consolidated group and, therefore, it has the authority to execute the Forms 872 for those years as agent for the remaining members of the group.

Form 872 for [REDACTED] and [REDACTED] U.S. Consolidated Return, Form 1120:

The consolidated return filed for the [REDACTED] and [REDACTED] years was in the name of [REDACTED]. During the years [REDACTED] and [REDACTED] [REDACTED] was the common parent for this consolidated group. The common parent of a consolidated group is the sole agent for each subsidiary in the group. Treas. Reg. @ 1.1502-77(a). Under Treas. Reg. @ 1.1502-77(a), the common parent for a particular consolidated return year remains the common parent agent for purposes of extending the period of limitations with respect to that year even though that corporation is no longer the common parent of that group when some action, such as executing an extension, needs to be taken for that year. Thus, the Form 872 that was secured for the [REDACTED] and [REDACTED] U.S. Consolidated Returns is proper. The name of the taxpayer is [REDACTED] and the form was executed by a person that you stated has authority to sign such an extension on behalf of [REDACTED].

Form 872: [REDACTED], U.S. Consolidated Return, Form 1120:

The consolidated return filed for the [REDACTED] year was in the name of [REDACTED]. During the year [REDACTED], [REDACTED] was the common parent of the group and [REDACTED] is a subsidiary. The common parent of a consolidated group is the sole agent for each subsidiary in the group. Treas. Reg. @ 1.1502-77(a). Under Treas. Reg. @ 1.1502-77(a), the common parent for a particular consolidated return year remains the common parent agent for purposes of extending the period of limitations with respect to that year even though that corporation is no longer the common parent of that group when some action, such as executing an extension, needs to be taken for that year. Thus, the Form 872 that was secured for the [REDACTED] is NOT properly executed. While the name of the taxpayer is correctly identified as [REDACTED], formerly known as [REDACTED] and subsidiaries, the signature line reads as follows: "[REDACTED]" and is signed by [REDACTED] Director-Tax Services. The form 872 must be signed by an officer of [REDACTED] not [REDACTED].

The only other entity that may execute the extension is the current common parent of the new consolidated group. Temp. Treas. Reg. § 1.1502-77T provides that the new common parent is an alternate agent for the former common parent of a consolidated group and, therefore, it has the authority to execute the Forms 872 for those years as agent for the remaining members of the group. Thus, it appears that an extension may also be signed by an officer of [REDACTED], however if any additional changes have occurred since the filing of the [REDACTED] return, [REDACTED] may no longer be the proper alternate agent. Thus, we recommend that

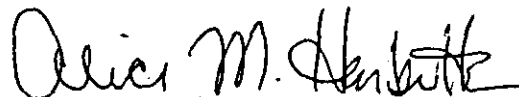
the extension, Form 872, be obtained from and be excused by an officer of [REDACTED]. This assumes [REDACTED] is still in existence.

Form 1042, withholding tax:

The extensions secured with respect to [REDACTED]'s Forms 1042 are properly worded and are valid extensions. The consolidated return rules do not apply to [REDACTED]'s requirement to report the income tax withheld on foreign persons pursuant to sections 1441 and 1442, as reported on Form 1042. Therefore, the Service should obtain (and did obtain) the Forms 872 directly from [REDACTED]. The reference on the Form 872 to the Form 1042 makes it clear that the Form 872 is extending the period of limitations for income tax withheld by [REDACTED] on foreign persons.

CONCLUSION

If you have any questions concerning this matter please call Special Trial Attorney Alice M. Harbutte at (303) 844-3258.



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